

## Employee Rights and Wrongful Discharge

*Toussaint v. Blue Cross & Blue Shield of Michigan, Ebling v. Masco Corporation* (1980)  
408 Mich. 579

*Toussaint v. Blue Cross* represents two cases, *Toussaint* and *Ebling*, which were merged by a majority of the Michigan Supreme Court for having indistinguishable facts. In *Toussaint*, Charles Toussaint sued Blue Cross & Blue Shield for wrongful discharge after he was told to resign in 1972; similarly, in *Ebling*, Walter Ebling brought an action for wrongful discharge against Masco Corporation, suing for lost stock options and wages. At the trial court level, Toussaint was awarded \$73,000 and Ebling \$300,000. Both cases were appealed to the Court of Appeals, where Toussaint's verdict was reversed and Ebling's affirmed.

Both cases were appealed to the Michigan Supreme Court, where they were merged into one. In the majority opinion (4-3), Justice Levin found that both cases were ruled correctly at the trial court level, resulting in an affirmation of the Court of Appeals decision in *Ebling* and a reversal of their decision in *Toussaint*. Though both employment positions were for an indefinite period, and therefore would normally be considered "at-will" employment, each plaintiff testified to having an oral contract with their employer that ensured they would only be discharged for "good or just cause." Toussaint further testified that he had a written contract with Blue Cross to that effect as well.

In two separately written opinions, Justice Ryan concurred with the majority on *Ebling* and dissented in regard to *Toussaint*. To Ryan, as well as to Justice Fitzgerald and Chief Justice Coleman, the two cases were not indistinguishable. In his concurring opinion, Ryan agreed with the judgment in *Ebling*, but iterated that the oral agreement between Ebling and his employer must be judged under strict scrutiny in order to qualify as a contract that negates the assumed "at-will" employment. He found that, because the two agreed on exactly what actions would be taken before Ebling's dismissal, the agreement constituted an oral contract. Because these actions were not ultimately taken, Ryan found that Ebling had a cause for action due to wrongful dismissal from employment.

Ryan, Fitzgerald and Coleman also affirmed the Court of Appeals judgment in *Toussaint*, which called for a reversal in favor of the defendant. Ryan argued that Toussaint, unlike Ebling, did not have a cause for action due to wrongful dismissal, despite Toussaint's claims about having both an oral and written contract to that effect. Toussaint's oral contract was much simpler than Ebling's. While Ebling and his employer discussed on specific terms what conditions would result in a dismissal, Toussaint was simply reassured that the employer he was talking to had never known of anyone being discharged. Ryan did not believe that this constituted an oral contract to the effect that Toussaint could only be fired for good or just cause.

Justice Ryan also found that there was no written contract in *Toussaint*. Toussaint believed that his employee manual, presented to him after his employment and while discussing the company's termination policy, qualified as a written contract that guaranteed just cause for termination. Ryan, on the other hand, found that it may have represented the company's policy, but that this policy was in no way a contract with each employee, and was subject to change by the company at any time. The majority of the justices, of course, disagreed with Ryan, finding that Toussaint was wrongfully discharged.